

FCC MAIL SECTION

Federal Communications Commission

DA 99-2562

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DISPATCHED BY
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 99-329
Table of Allotments,)	RM-9701
FM Broadcast Stations.)	
(Avalon, Fountain Valley, Adelanto,)	
Ridgecrest and Riverside, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 10, 1999

Released: November 19, 1999

Comment Date: January 10, 2000

Reply Comment Date: January 25, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Amaturro Group of L.A., Ltd. ("petitioner"), licensee of Stations KLIT, Channel 224A, Avalon, as well as Station KELT, Channel 224A, Riverside, California, and KMLT, Channel 224A, Thousand Oaks, California. Petitioner seeks the reallocation of Channel 224A from Avalon to Fountain Valley, as that community's first local aural transmission service and modification of the license of Station KLIT accordingly, as well as the reallocation of Channel 224A from Riverside to Adelanto, California, as that community's first local FM service, and accompanying modification of the license of Station KELT. Additionally, to accommodate its proposal, petitioner requests the substitution of Channel 224A for Channel 224B1 at Ridgecrest at a newly specified transmitter site and modification of the license of Station KZIQ-FM, as well as a change in the reference coordinates of Station KMLT, Channel 224A, Thousand Oaks, California, to avoid a short spacing to the proposed reallocation of Channel 224A to Fountain Valley, California.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part* "Change of Community MO&O", 5 FCC Rcd 7094 (1990). In support of the proposal petitioner states that the requested reallocations to Fountain Valley (population 53,691),¹ and Adelanto, California (population 8,517), are each mutually exclusive with their present allotments at Avalon and Riverside.

¹ Population figures reported herein were taken from the 1990 U.S. Census Reports.

Moreover, petitioner asserts that James L. and Donna L. Knudsen, the licensee of Station KZIQ-FM, Channel 224B1, Ridgecrest, has consented to the requested downgrade at that community, provided the other modifications sought herein are granted, and supplied a copy of their consent statement.

3. In further support of its proposal, petitioner remarks that the requested reallocations will result in a preferential arrangement of allotments (*Change of Community R&O* at 4873), as it will provide a first local aural transmission facility to each of the incorporated communities of Fountain Valley and Adelanto,² without depriving either Avalon or Riverside of local service.³ Further petitioner states that the requested reallocations will not create nor eliminate any white or gray areas. Additionally, petitioner advises that its proposal will add service to in excess of 2.3 million persons. Although 900,000 persons will lose service, petitioner reports that they will still receive service from five or more aural services with the exception of 107 people who will continue to receive four aural services. However, petitioner maintains that these minimal losses are off-set by the overall gains (182 persons will gain a fourth service and 506 people will gain their fifth aural service). Moreover, petitioner advises that its proposal will eliminate grandfathered short spacings between Stations KLIT, Avalon and KMLT, Thousand Oaks, as well as between Station KELT and KXFG, Channel 225A, Sun City, California, and Station KKUU, Channel 224A, Indio, California, resulting in the removal of interference to more than 1.5 million people.

4. A staff engineering review of the proposal reveals that the loss area for Station KLIT at Avalon contains 3,317 people and encompasses an area of 145 square kilometers, whereas the gain area at Fountain Valley contains 2,141,438 people and covers 1,292 square kilometers. Therefore, this aspect of the petitioner's proposal would produce a net gain of 2,138,121 people within an area of 1,147 square kilometers. Our review also confirms that the loss and gain areas are served by at least five existing full-time aural services. Additionally, the loss area for Station KELT, Riverside, contains 819,012 people in an area of 2,343 square kilometers. The gain area at Adelanto contains 127,694 people also within an area of 2,343 square kilometers. While the latter produces a net loss of service to 691,318 people, both the loss and gain areas are served by at least five existing full-time aural services.

² Petitioner states that neither Fountain Valley nor Adelanto is part of an urbanized area, and therefore no issues relative to the movement of service to an urbanized area are presented. In support of its assertion petitioner provided demographic information concerning Fountain Valley and Adelanto to establish that each of those incorporated communities are self-contained. Therefore, petitioner asserts that even if Fountain Valley and Adelanto were part of an urbanized area, it would not have a negative impact on the instant proposal as the public interest is furthered by the allotment of a station to a community that is distinct from the urbanized area's core, citing *Canovanas, etc., Virgin Islands*, 8 CR 1169 (1997).

³ In this regard, petitioner advises that Avalon will continue to receive local service provided by Station KISL(FM), Channel 204A and Station KBRT(AM). Riverside will continue to receive local service provided by Stations KUCR, Channel 202A, KSGN, Channel 209A, KSSE, Channel 248B, KGGI, Channel 256B, as well as AM Stations KDIF and KPRO.

5. Further, our analysis also reveals that while Avalon is not within an urbanized area, the proposed reallocation of Channel 224A to Fountain Valley, will provide coverage to 7.8% of the Los Angeles, urbanized area. We also find that the proposed reallocation of Channel 224A to Adelanto would provide coverage to 13.4% of the Hesperia-Apple Valley-Victorville, California, urbanized area, whereas its present allotment at Riverside provides service to 25.3% of the Riverside-San Bernardino, California, urbanized area. Based upon the small degree of 70 dBu coverage the proposed reallocations would provide, a Tuck analysis is not required for the communities of Fountain Valley and Adelanto.⁴

6. As the licensee of Station KZIQ-FM, Channel 224B1, Ridgecrest, has consented to the proposed downgrade at that community to accommodate the proposed reallocation of Channel 224A from Riverside to Adelanto, California, the issuance of an Order to Show Cause is not required. However, we have no indication that it is willing to relocate its transmitter to a site located 1.5 kilometers west of the community at coordinates 35-37-27 NL; 117-41-10 WL, as proposed by the petitioner. As the relocation is required to comply with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, absent a statement from the licensee indicating its willingness to change its site, we will not entertain an involuntary change in the transmitter site of Station KZIQ-FM. Therefore, petitioner is required to provide a notarized statement from the licensee of Station KZIQ-FM indicating its consent to relocate its transmitter consistent with the petitioner's proposal. We shall also serve the licensee of Station KZIQ-FM with a copy of this Notice. Additionally, Commission policy requires reimbursement to Station KZIQ-FM for the reasonable costs incurred in changing frequencies as well those expenses associated with a change in its transmitter site, as requested by the petitioner. See Circleville, Ohio, 8 FCC 2d 159 (1976). Petitioner did not provide the requisite reimbursement commitment in its proposal and is requested to do so in response to this Notice. Failure to do so will result in a denial of the proposal.

7. In consideration of the above, and on a comparative basis, the petitioner's proposal would provide a first local aural transmission service to Fountain Valley and to Adelanto, California, (priority three) whereas Avalon and Riverside will each retain local service, (priority four). Therefore, we will propose to reallocate Channel 224A from Avalon to Fountain Valley, California, and modify the petitioner's license for Station KLIT accordingly. Additionally, we will propose to reallocate Channel 224A from Riverside to Adelanto, California, and modify the license for Station KELT, as requested. As the petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 224A at Fountain Valley or at Adelanto. We will also propose to downgrade Station KZIQ-FM, Ridgecrest, California, to specify operation on Channel 224A, contingent upon the provision of additional information as set forth in paragraph 6, above.

8. Channel 224A can be allotted to Fountain Valley in conformity with the minimum

⁴ See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951), RKO General, Inc., 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's specified site located 9.9 kilometers (6.1 miles) south of the community at coordinates 33-36-56 NL; 117-55-33 WL; Channel 224A can be allotted to Adelanto at the petitioner's specified site located 8.9 kilometers (5.5 miles) west of the community at coordinates 34-36-11; 117-28-01. We shall also propose to revise the reference coordinates for Station KMLT, Channel 224A, Thousand Oaks, California, to 34-13-05 NL; 118-56-42 WL. The proposed downgrade to Channel 224A at Ridgecrest can be utilized at the petitioner's proposed site for Station KZIQ-FM, located 1.5 kilometers west of the community at coordinates 35-37-27 NL; 117-41-10 WL. Additionally, as Fountain Valley and Adelanto, California, are both located within 320 kilometers (199 miles) of the U.S.-Mexico border, the Commission will seek concurrence of the Mexican government to the proposed allotments.

9. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard the communities listed below, as follows:

	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Adelanto, California	--	224A
Avalon, California	224A	--
Fountain Valley, California	--	224A
Ridgecrest, California	224B1, 285B1	224A, 285B1
Riverside, California	224A, 248B, 256B	248B, 256B

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before January 10, 2000, and reply comments on or before January 25, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Bradford D. Carey, Esq.
 Ashton R. Hardy, Esq.
 Hardy & Carey, LLP
 110 Veterans Memorial Blvd.
 Suite 300
 Metairie, LA 70005

12. IT IS ORDERED, That the Secretary SHALL SEND a copy of this Notice of Proposed Rule Making to the licensee of Station KZIQ-FM, Ridgecrest, California, as follows:

James L. and Donna L. Knudsen
Radio Station KZIQ-FM
121 West Ridgecrest Blvd.
Ridgecrest, CA 93555

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

14. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's

Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.